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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

PETER CHAUNT, *Petitioner*,

v.

UNITED STATES OF AMERICA,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Peter Chaunt petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the Ninth Circuit which affirmed a judgment of the United States District Court for the Southern District of California revoking petitioner's naturalization.

OPINION BELOW

The opinion below (X R. 3) is reported in 270 F. 2d 179, and also appears in Appendix C of this petition.

JURISDICTION

The judgment below was entered on September 22, 1959 (X R. 10; Appendix B herein). Jurisdiction of this Court exists under 28 U. S. Code 1254(1).

QUESTIONS PRESENTED

1. Whether a denaturalization judgment may be based on a ground not alluded to in the affidavit of good cause, the filing of which is required by the denaturalization statute as a prerequisite to the filing and maintenance of the action.

2. Whether denaturalization may validly be predicated on concealment in naturalization proceedings of an arrest record, without regard to whether (a) disclosure of the arrests would not have prevented naturalization, (b) the arrests occurred years before the statutory period of good-behavior for eligibility of citizenship, (c) the arrests did not result in convictions, and (d) the arrests were under ordinances which violated the First Amendment.

STATUTE INVOLVED.

Section 340(a) of the Immigration and Nationality Act, 66 Stat. 163, 260, as amended by an Act of September 3, 1954, 68 Stat. 1232, 8 U. S. C. 1451,[1] provides, in part, as follows:

> "It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title [sec. 1421 of 8 U.S.C.] in the judicial district in which the naturalized

[1] The amendment substituted "United States attorneys" for "United States district attorneys" in the quoted excerpt.

citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively . . . ."

STATEMENT OF THE CASE

Petitioner, a native of Hungary, came to the United States in 1921 at the age of 22 (X R. 3). In November 1939, he filed his preliminary form for petition for naturalization. He was orally examined on June 27, 1940, by examiners of the Immigration and Naturalization Service. Thereafter he filed his formal petition for naturalization in the United States District Court for the Eastern District of New York. He was naturalized by that court on November 28, 1940. (X R. 4.)

Thirteen years later, the government instituted suit to revoke petitioner's citizenship under section 340(a) of the Immigration and Nationality Act, on the statutory grounds that the naturalization had been procured by concealment and willful misrepresentation of material facts (X R. 4; I R. 2).[2]

A copy of the affidavit of good cause, required by the statute, was attached to the original complaint,

[2] Statutory authority for revocation of naturalization procured by fraud has continually existed since 1906. See sec. 15, Act of June 29, 1906, 34 Stat. 601, superseded by section 338 of the Nationality Act of 1940, 54 Stat. 1158, which in turn was superseded by section 340 of the Immigration and Nationality Act.

as well as to the second amended complaint on which the case was tried (III R. 570; I R. 8, 189). The affidavit, admitted at the trial as Plaintiff's Exhibit 36A (V R. 100), is printed in Appendix A of this petition.

The affidavit alleged that in the proceedings which led to his naturalization petitioner had (1) stated that he had never belonged to any Communist organization, whereas in fact he had been a member of the Communist Party, and (2) made false representations about his belief in the United States form of government, his attachment to the principles of the Constitution, and his intention to renounce foreign allegiance and to bear allegiance to the United States (P. Ex. 36A).

The complaint made similar allegations. In addition, it alleged that petitioner had procured naturalization by concealing and misrepresenting a record of arrests. (I R. 180-89.) The affidavit of good cause contained no reference to arrests or to concealment or misrepresentation of arrests.

After trial, the District Court entered judgment canceling petitioner's naturalization, on findings that he had procured naturalization by concealments and misrepresentations of the three matters alleged in the complaint—i.e., arrests, Communist Party membership, and his political opinions and allegiance (III R. 561-73).

The Court of Appeals affirmed solely on the ground that the evidence sustained the findings of concealment and misrepresentation of arrests (X R. 3-9). It did not reach the other findings of the District Court, stating (X R. 7): "Since these findings [on the arrests] furnish ample support for the judgment revoking the defendant's naturalization it is unnecessary

for us to consider whether, as the defendant urges, the findings of the district court as to his concealment of his membership in the Communist Party and as to his lack of attachment to the principles of the Constitution and his disposition toward the good order of the United States can stand in the light of the decisions of the Supreme Court in Nowak v. United States, 1958, 356 U.S. 660, and Maisenberg v. United States, 1958, 356 U.S. 670, which were handed down after the district court entered its judgment in this case."

As a result, petitioner's denaturalization was sustained solely on a ground—concealment and misrepresentation of an arrest record—which is not alluded to in the affidavit of good cause, executed to satisfy the statutory prerequisite to institution of a denaturalization action.[3]

On the subject of the arrests, both the court below and the District Court found that petitioner had answered "No" to the following question on the preliminary form for petition for naturalization: "Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation?" (X R. 5; III R. 567). The court below also accepted testimony of the naturalization examiner that his mark "NCR" on the preliminary form meant that he had asked petitioner if he had had any record of arrests, and petitioner had answered none (X R. 6; V R. 23).

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[3] Since the court below did not pass on the grounds for denaturalization other than the arrests, this petition is not addressed to those other grounds. Should the Court grant certiorari and reverse, the appropriate action would be to remand to the Court of Appeals for disposition of the remaining grounds on which the District Court acted.

Both courts found that petitioner had the following record of arrests and dispositions prior to his naturalization:

(1) "On or about July 30, 1929, defendant was arrested on the charge that 'at said city and town of New Haven, Peter Chaunt, of the said city and town of New Haven, did then and there distribute in a public street, to wit, Ashmun Street, certain hand-bills against the peace of the State, of evil example, and contrary to the ordinance in such case made and provided. Ord. 729.' Disposition: 'Plea—not guilty—Discharged.'"

(2) "On or about December 21, 1929, defendant was arrested on the charge that 'at said city and town of New Haven, Peter Chaunt, temporarily of said city and town, did make an oration, harangue, or other public demonstration in New Haven Green outside of the churches. Pages 609 Charter and Ordinances.' Disposition, 'Demurrer filed 12-27-29. Demurrer overruled—Whitaker 12-27-29, plea—not guilty, Found J. S.'"

(3) On "the 11th day of March, 1930, defendant was arrested and charged at said city and town of New Haven that he 'did commit, violate, Peter Chaunt, general breach of peace;' 'plea N.G., finding G, ordered to be imprisoned in New Haven County Jail and/or to pay fine of $25.00 to stand committed until judgment satisfied. Appealed.'" The Court of Appeals added: "It appears that upon the appeal the defendant pleaded not guilty and the case was 'nolled' by the Court of Common Pleas." (X R. 6; III R. 567-68.)

The District Court found that *all* the misrepresentations included in its findings had collectively foreclosed the Immigration and Nationalization Service and the naturalizing court from making further investigation into petitioner's eligibility for citizenship (III R. 569-

70). The Court of Appeals inaccurately translated this into a finding by the District Court that the petitioner's failure to disclose his record of arrests had *by itself* foreclosed further investigation. It then held that this translated "finding" was "amply supported." (X R. 6.)

The court below ruled that concealment of arrests is per se a material circumstance without regard to whether disclosure of the arrests would have resulted in refusal of naturalization. It stated (X R. 7):

> "It was not necessary for the district court to determine whether, upon further inquiry prompted by knowledge of the defendant's arrests, he would have been found ineligible for citizenship. For the test of the materiality of such a concealment and misrepresentation of facts 'is not whether naturalization would have been refused if defendant had revealed the truth, but whether, by his false answers, the government was denied the opportunity of investigating the facts relating to his eligibility.' United States v. Chandler, D. C. Md. 1957, 152 F. Supp. 169, 177."

The court recognized the possibility that the New Haven ordinances involved in the first two arrests may have been "sought to be enforced against the defendant in violation of his constitutional rights." However, it held that the District Court was not called upon to inquire into this possibility, and that it was immaterial whether the arrests were proper or improper. (X R. 8.)

REASONS FOR ALLOWING THE WRIT

1. The Affidavit Question

The court below sustained the cancellation of petitioner's citizenship solely on the ground that petitioner had concealed and misrepresented his arrests. Yet the affidavit of good cause, required by the statute, contains not a word or intimation regarding arrests or concealment or misrepresentation of arrests; it deals exclusively with other claimed grounds for revocation.

United States v. *Zucca*, 351 U.S. 91, held that the filing of the affidavit of good cause is a prerequisite to the initiation and maintenance of a denaturalization suit. *Nowak* v. *United States*, 356 U.S. 669, held that such an affidavit "satisfied the purpose of § 338(a) to protect those proceeded against from ill-considered action," only because, "In substance the affidavit set forth the same matters upon which the District Court's later decree of denaturalization was based, and showed with adequate particularity the grounds on which the Government's suit rested" (at 662).

Furthermore, the filing of a sufficient affidavit is a jurisdictional or quasi-jurisdictional prerequisite. This appears from the facts that failure to file the affidavit with the complaint cannot be cured by a later filing and also prevents coercion of testimony by deposition. *Matles* v. *United States* and companion cases, 356 U.S. 256.

Since the denaturalization decree here was sustained solely on a ground not mentioned in the affidavit of good cause, the judgment below violates the statute and contradicts this Court's decisions in *Zucca*, *Nowak* and *Matles*.

2. The Materiality Question

The court below has read the requirement of materiality out of the denaturalization act, at least where arrests are concerned. This contravenes the statute, which authorizes denaturalization not for any concealment or misrepresentation made in the naturalization proceeding, but only for those which "procured" the naturalization. Cf. *United States* v. *Anastasio*, 226 F. 2d 912, cert. den., 351 U.S. 931 (misrepresentation of an arrest record does not support denaturalization where the true facts were known to the government at the time of naturalization).

The three arrests which petitioner concealed had occurred about ten years before his initial application for naturalization. The naturalization statute said nothing about arrests and required good moral character for only five years immediately preceding the petition for naturalization.[4]

In the case of one of the arrests, petitioner was discharged. In the case of another, the charge was "nolled" on appeal. The disposition of the third arrest is unclear, the record containing only the unexplained notation "Found J. S.", without any indication of a sentence.

Two of the arrests, including the one of unknown disposition, were for violations of city ordinances which quite clearly were unconstitutional on their face—being, respectively, for distributing handbills and for making a speech "outside of the churches." Cf. *Lovell*

[4] Sec. 4, subd. Fourth, of the Naturalization Act of June 29, 1906, as amended by Act of March 2, 1929 (34 Stat. 598, as amended by 45 Stat. 1513). The superseding Nationality Act of 1940 did not become effective until January 13, 1941. 54 Stat. 1174.

v. *Griffin*, 303 U.S. 451; *Jamison* v. *Texas*, 318 U.S. 413; *Hague* v. *C.I.O.*, 307 U.S. 496; *Schneider* v. *Irvington*, 308 U.S. 147; *Niemotko* v. *Maryland*, 340 U.S. 268. The third arrest, for "general breach of peace," originally evoked a fine of only $25.00, and the case was thereafter "nolled" on appeal.

The court below disregarded all these indications that the arrests were inconsequential. It laid down an untenable rule of law that denaturalization automatically attends the concealment of any arrests, no matter how remote, for whatever trivial offense, whether under an unconstitutional ordinance, regardless of the disposition of the charge, and though disclosure of the arrests would not have resulted in denial of naturalization. (See *supra*, p. 7.)

The court held that petitioner's concealment of the arrests had foreclosed further investigation into his qualifications for citizenship. This conclusion was based on a misreading of the District Court's findings (*supra*, pp. 6-7.) But even if it were true, it would be immaterial without some showing—of which there was none—that the further investigation might reasonably have led to denial of naturalization. "We have found no decision and none has been cited to us where citizenship has been revoked for failure to disclose facts the revelation of which would not have justified refusal of citizenship in the first place." *United States* v. *Kessler*, 213 F. 2d 53, 58, ftn. 9.

The dilution below of the statute's materiality requirement is particularly unfortunate because of the absence of any statute of limitations and, apparently, of any rule of laches in denaturalization cases. The result here is that petitioner has been denaturalized

in an action commenced thirteen years after naturalization on account of concealment of three thoroughly inconsequential arrests, at least two of which represented violations of his First Amendment right.

The decision in this case and the standards applied are basically inconsistent with the Third Circuit's decisions in *United States* v. *Kessler* and *United States* v. *Anastasio,* both *supra,* which stand for the proposition that denaturalization may not be based on misrepresentations of arrests the disclosure of which would not have warranted denial of naturalization. And contrary to the holding in this case that it did not matter whether the arrests were for unconstitutional offenses, *Kessler* holds that denaturalization may not be based on a non-disclosure of illegal arrests.

Naturalization is accomplished by a formal judgment entered in a proceeding in which the government is a party and has a right of appeal. It is hard to believe that Congress intended naturalization judgments to be less stable than other civil judgments. Other final judgments, however, cannot be set aside merely because false or perjured testimony was involved. The fraud must also have had the effect of foreclosing a meritorious claim or defense. See Restatement, Judgments (1942) secs. 118, 121, 126(2)(b). This principle is contrary to the holding below that it was immaterial that disclosure of petitioner's arrests would not have prevented his naturalization.

CONCLUSION

Certiorari should be granted, and the judgment below reversed.

Respectfully submitted,

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APPENDIX

APPENDIX

Appendix A—The Affidavit of Good Cause (P. Ex. 36A)

UNITED STATES OF AMERICA
DISTRICT OF COLUMBIA } ss. C-4785200

Maurice A. Roberts, being duly sworn, deposes and says:

1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Justice, and as such has access to the official records of the said Service, from which the following facts appear:

(a) That PETER CHAUNT filed a petition for naturalization in the United States District Court for the Eastern District of New York on June 27, 1940 and was admitted to citizenship by that court on November 28, 1950, receiving naturalization certificate No. 4785200.

(b) That in the proceedings which led to his naturalization, the said PETER CHAUNT alleged under oath:

(I) That he had never belonged to any Communist, Nazi or Fascist organization and that the only organization to which he had ever belonged was the fraternal benefit society of International Workers Order.

(II) That he fully believed in the form of government of the United States; and that he did not belong to and was not associated with any organization which teaches or advocates the overthrow of existing government in this country.

(III) That he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; that it was his intention to renounce absolutely and forever all allegiances and fidelity to any foreign prince, potentate, state, or sovereignty of which he was a subject or citizen.

(IV) That he would support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that he would bear true faith and allegiance to the same; and that he took this obligation freely without any mental reservation or purpose of evasion.

(c) That the allegations of said PETER CHAUNT as set forth in subparagraph 1 (b) were false and untrue.

(d) That the said PETER CHAUNT has been an active member and officer of the Communist Party of the United States, including the Workers (Communist) Party and other organizations affiliated with or controlled by the Communist Party of the United States, since at least 1926.

(e) That the Communist Party of the United States is an organization which at all times since 1926, as the said PETER CHAUNT well knew:

(I) Advised, advocated, or taught the overthrow by force or violence of the government of the United States;

(II) Advised, advocated, or taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

(III) Advised, advocated, or taught the unlawful damage, injury or destruction of property;

(IV) Advised, advocated, or taught sabotage;

(V) Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised,

advocated, or taught the performance of the acts described in subparagraphs 1(e), I, II, III and IV.

(VI) Promoted, influenced, and advocated the political activities, public relations, and public policy of the Union of Soviet Socialistic Republics.

(f) That at all of the times above mentioned, as the said PETER CHAUNT well knew, the Communist Party of the United States was a section of the international organization whose principal officers were citizens or subjects of the Union of Soviet Socialist Republics and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organization were binding upon other Communist Parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

(g) That by reason of the foregoing, the said PETER CHAUNT at the time he applied for and obtained naturalization; was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States; did not intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic; and did not intend to abjure or renounce allegiance and fidelity to the Union of Soviet Socialist Republics.

(h) That the said PETER CHAUNT intentionally and deliberately made false statements and concealed the true facts in the proceedings leading to his naturalization, as set forth in preceding subparagraphs, in order to prevent the making of a full and proper investigation of his qualifications for citizenship; to induce the naturalization examiner to make an unconditional recommendation to the court that his petition be granted; to preclude inquiry by the court concerning

his qualifications for citizenship; and to procure naturalization in violation of law.

2. That good cause exists for the institution of a suit under Section 340(a) of the Immigration and Nationality Act, 8 U.S.C. 1451 (a), to set aside and cancel the naturalization of said PETER CHAUNT as having been procured by concealment of material facts and by willful misrepresentation.

3. That the last known place of residence of the said PETER CHAUNT is 3305 West 34th Street, Cleveland, Ohio.

s/ MAURICE A. ROBERTS
Attorney

Subscribed and sworn to at Washington in the District of Columbia this 6th day of May, 1953, before me, the Assistant General Counsel of the Immigration and Naturalization Service, United States Department of Justice, authorized by Section 332d.1 of Title 8 of the Code of Federal Regulations to administer oaths.

s/ ALBERT E. REITZEL
Assistant General Counsel

Appendix B—The Judgment Below

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15843

PETER CHAUNT, *Appellant*,

vs.

UNITED STATES OF AMERICA, *Appellee*.

Judgment

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed) Judgment

Filed and entered: September 22, 1959

Paul P. O'Brien, *Clerk*

Appendix C—The Opinion Below

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15,843

Sept. 22, 1959

Peter Chaunt, *Defendant-Appellant*,

vs.

United States of America, *Plaintiff-Appellee*.

Appeal from the United States District Court
for the Southern District of California,
Central Divison

Before: Stephens, Maris and Barnes, *Circuit Judges*

Maris, *Circuit Judge*

The defendant, Peter Chaunt, appeals from a judgment entered in the District Court for the Southern District of California which revoked a prior order admitting him to

citizenship and cancelled his certificate of naturalization on the grounds that his naturalization had been procured by concealment of material facts and by willful misrepresentations. The record, which consists largely of testimony and documents offered by the Government, discloses the following pertinent facts:

The defendant, a native of Hungary, came to the United States in 1921 at the age of 22. During 1928 he worked on a Hungarian Communist daily paper, Uj Elore, and with the Young Communist League in Akron, Ohio. In 1929 and 1930 he had been arrested three times in the City of New Haven, Connecticut, charged in the first two instances with the violation of city ordinances and in the third with a general breach of the peace.

During 1930 and 1931 his name appeared in the Daily Worker in connection with some of his activities. On June 21, 1930 an article entitled, "For Offensive Strategy, by Peter Chaunt, District Organizer, District 15", appeared in the Daily Worker. In 1931 he taught the subject "Leninism" at a Communist training school in Ontario, Canada. From 1930 to 1940 he acted as District Organizer for the Communist Party in certain districts located in Connecticut, New York and Missouri. Also, during some of those years he attended conventions and meetings of the Communist Party.

In November 1939 the defendant filed an application for a certificate of arrival and a preliminary form for petition for naturalization with the Immigration and Naturalization Service in New York. He was orally examined under oath on June 27, 1940 by two examiners of the Immigration and Naturalization Service as to the questions and answers appearing on his petition, as well as on supplementary questions. His formal petition for naturalization was thereupon filed in the United States District Court for the Eastern District of New York. The petition was granted and the defendant was naturalized on November 28, 1940.

Thirteen years later the Government brought the present action for defendant's denaturalization under § 340(a) of the Immigration and Naturalization Act of 1952, 8 U.S.C.A. § 1451(a), charging that, in answering the questions propounded to him, the defendant had concealed material facts and had made willful misrepresentations.

The gravamen of the amended complaint was that prior to and at the time of naturalization the defendant intentionally concealed the facts that he was an active member and officer of the Communist Party, and that he had been arrested, and intentionally and falsely represented that the only organization to which he belonged was the "Fraternal Benefit Society of International Workers Order", that he was attached to the principles of the Constitution and well disposed to the good order and happiness of the United States, and that he had never been arrested, whereas in fact he was a member and officer of the Communist Party and by reason thereof and of his knowledge of the nature and principles of that Party was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States, and had been arrested three times. The amended complaint further asserted that as a result of these concealments and misrepresentations the Immigration and Naturalization Service did not make a further investigation as to whether the defendant for five years immediately preceding his application had behaved as a person of good moral character attached to the principles of the Constitution and well disposed to the good order and happiness of the United States and whether he could take the oath of allegiance without mental reservation or purpose of evasion, all as required by section 4 of the Immigration and Nationality Act of 1906, 34 Stat. 596. The district court found that the evidence supported the claims made by the Government and entered judgment revoking the order admitting defendant to citizenship and cancelling Certificate of Naturalization No. 4785200. This appeal followed.

The defendant contends that the findings of the district court must be set aside as erroneous and that, in any event, the issues are res judicata between him and the Government. In reviewing the findings of the district court in denaturalization cases we must scrutinize the record with utmost care to determine whether the Government had carried its burden of proving by "clear, unequivocal, and convincing" evidence, which does not leave "the issue in doubt", that the citizen who is sought to be returned to the status of an alien obtained his naturalization certificate illegally. Schneiderman v. United States, 1943, 320 U.S. 118, 158; Baumgartner v. United States, 1944, 322 U.S. 665, 670; Knauer v. United States, 1946, 328 U.S. 654, 657-658; Nowak v. United States, 1958, 356 U.S. 660, 663; Maisenberg v. United States, 1958, 356 U.S. 670.

We consider first the defendant's contention that the district court erred in finding that he intentionally concealed the fact of his arrests and willfully misrepresented that he had never been arrested. In his preliminary form for petition for naturalization the defendant answered "No" to Question 30: "Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation?" The defendant does not contend that this question is ambiguous. The Government called as a witness Calvin Derrenger, the naturalization examiner who conducted the preliminary examination of the defendant, who testified, inter alia, that it was his custom and practice, as well as duty under the regulations of the Immigration and Naturalization Service, to cover thoroughly the question of arrests. He identified various marks which appeared on the defendant's preliminary form for petition for naturalization. In respect to the initials "RE" he testified: "They mean that the petitioner could read English. I tested him on that and found he could read English." As to the initials "NCR" he stated: "They mean that I asked the petitioner if he had any record of arrests anywhere and his answer was

that he had none, and the 'NCR' stands for no criminal record anywhere". This testimony was undisputed.

The district court found that prior to his naturalization "(a) On or about July 30, 1929, defendant was arrested on the charge that 'at said city and town of New Haven, Peter Chaunt, of the said city and town of New Haven, did then and there distribute in a public street, to wit: Ashmun Street, certain hand-bills against the peace of the State, of evil example, and contrary to the ordinance in such case made and provided. Ord. 729.' Disposition, 'Plea—not guilty—Discharged'; (b) On or about December 21, 1929, defendant was arrested on the charge that 'at said city and town of New Haven, Peter Chaunt, temporarily of said city and town, did make an oration, harangue, or other public demonstration in New Haven Green, outside of the churches. Pages 609 Charter and Ordinances'. Disposition, 'Demurrer filed 12-27-29. Demurrer overruled—Whitaker 12-27-29, plea—not guilty, Found J.S.';" and "(c) that on the 14th day of March, 1930, defendant was arrested and charged at said city and town of New Haven that he 'did commit, violate, Peter Chaunt, general breach of peace'; 'plea N.G., finding G, ordered to be imprisoned in New Haven County Jail and/or to pay fine of $25.00 to stand committed until judgment satisfied. Appealed'". It appears that upon the appeal the defendant pleaded not guilty and the case was "nolled" by the Court of Common Pleas.

The district court found that the defendant's failure to disclose his record of arrests was an intentional concealment of a material fact and a willful misrepresentation which foreclosed the Immigration and Naturalization Service and the district court from making a further investigation as to whether he had all the qualifications for citizenship required by the Act of 1906, as a result of which the Service recommended and the district court granted his petition for naturalization. We think that these findings are amply supported.

It has been held that concealment of arrests, revelation of which might have led the Immigration and Naturalization Service to make further investigation of the petitioner, is sufficient ground upon which to base a decree of denaturalization. Del Guercio v. Pupko, 9 Cir. 1947, 160 F. 2d 799; United States v. Corrado, E.D. Mich. 1953, 121 F. Supp. 75, aff. 6 Cir. 1955, 227 F. 2d 780, cert. den. 351 U.S. 925; United States v. Accardo, D.C.N.J. 1953, 113 F. Supp. 783, aff. 3 Cir. 1953, 208 F. 2d 632, cert. den. 347 U.S. 952; Stacher v. United States, 9 Cir. 1958, 258 F. 2d 112, cert. den. 358 U.S. 907; United States v. Montalbano, 3 Cir. 1956, 236 F. 2d 757.

Naturalization is a great privilege and one which once granted cannot lightly be taken away. But when granting the right the Government is entitled to frank, honest and unequivocal answers from the petitioner for citizenship to the questions put to him to throw light upon his qualifications or lack of them. And so the defendant here had a duty to answer honestly and fully the questions propounded to him. As stated by the district court in United States v. Corrado, E.D. Mich. 1953, 121 F. Supp. 75, 78, ff. 6 Cir. 1955, 227 F. 2d 780, cert. den. 351 U.S. 925: "If he had revealed that he had been arrested it does not necessarily follow that he would have been denied citizenship, but this was information that the examining officers were charged by law with obtaining and to which they were entitled. The seriousness of the offense and the materiality of any arrest or conviction would be then up to the examining officers, and if they wrongfully refused petitioner naturalization he could then appeal to the courts." It was not necessary for the district court to determine whether, upon further inquiry prompted by knowledge of the defendant's arrests, he would have been found ineligible for citizenship. For the test of the materiality of such a concealment and misrepresentation of facts "is not whether naturalization would have been refused if defendant had revealed the truth, but whether, by his false

answers, the government was denied the opportunity of investigating the facts relating to his eligibility." United States v. Chandler, D.C. Md. 1957, 152 F. Supp. 169, 177.

The defendant, however, contends that the findings of the district court must be set aside because there is no finding that any of the arrests were valid. For this proposition he relies upon United States v. Kessler, 3 Cir. 1954, 213 F. 2d 53. His reliance upon the Kessler case is misplaced. For in that case the Court of Appeals for the Third Circuit concluded, as that court pointed out in United States v. Montalbano, 3 Cir. 1956, 236 F. 2d 757, 760, that there had not been an untruthful answer given to the question concerning arrests, and so no fraud had been committed. That conclusion was based upon the fact that the arrests alleged were false arrests without color of right for an offense unknown to the law and which it was, therefore, not the duty of the applicant to report.

In the present case, however, all three arrests were for offenses known to the law, the first two for the violation of specified New Haven ordinances and the third for a breach of the peace, an offense known at common law. The defendant urges that the first two arrests were for the violation of ordinances which on their face are unconstitutional so that the failure to report them could not have been a material concealment or misrepresentation. It is possible that the ordinances in question were sought to be enforced against the defendant in violation of his constitutional rights. But neither the text of the ordinances nor the circumstances under which the arrests were made were before the district court. Nor was it necessary that they should be. For the court was not called upon to determine the propriety of the arrests or the guilt of the defendant. Whether the arrests were proper and, if so, the extent of their bearing upon the defendant's qualifications for citizenship were questions which the Immigration and Naturalization Service and the District

Court for the Eastern District of New York were entitled to consider in the proceeding for defendant's naturalization. That consideration was blocked by the defendant through his concealment of them.

Moreover the third arrest, that for "general breach of the peace" is not subject to the constitutional attack which the defendant levels against the other two. The failure to disclose it alone would be sufficient to sustain the judgment of the district court. For it is not the number of arrests, nor the character of the offenses, which is the important factor. It is the concealment of any material fact sought to be inquired into, including any arrest, which is the fraudulent act and which justifies not only the finding of fraud, but also the finding which the district court here made, that the defendant had not been of good moral character for a period of five years immediately preceding his applicationt and thus did not meet the statutory prerequisite to citizenship. Del Guercio v. Pupko, 9 Cir. 1947, 160 F. 2d 799; United States v. Lumantes, D.C. Cal. 1955, 139 F. Supp. 574, aff. 9 Cir. 1956, 232 F. 2d 216; United States v. Montalbano, 3 Cir. 1956, 236 F. 2d 757.

In the absence of any explanation by the defendant of his answer "No" to the question in respect to arrests, we find that the record fully justifies the finding of the district court that he deliberately concealed his arrests and falsely represented that he had never been arrested. Since these findings furnish ample support for the judgment revoking the defendant's naturalization it is unnecessary for us to consider whether, as the defendant urges, the findings of the district court as to his concealment of his membership in the Communist Party and as to his lack of attachment to the principles of the Constitution and his disposition toward the good order of the United States can stand in the light of the decisions of the Supreme Court in Nowak v. United States, 1958, 356 U.S. 660, and Maisenberg v. United States, 1958, 356 U.S. 670, which were handed

down after the district court entered its judgment in this case.

We come then to the defendant's final argument that the issues sought to be raised by the Government in this case were concluded by the order of the district court which admitted him to citizenship and are res judicata in this proceeding. As to this it is sufficient to say that the overwhelming weight of authority is to the effect that, at least in the case of an order of naturalization procured, as in this case, ex parte without an actual contested litigation of the issues, the issues as to concealment of material facts and willful misrepresentations in the procurement of the order of naturalization are open in a subsequent suit by the United States for the revocation of the order and the cancellation of the certificate of naturalization. Tutun v. United States, 1926, 270 U.S. 568, 579; Baumgartner v. United States, 1944, 322 U.S. 665, 672; Knauer v. United States, 1946, 328 U.S. 654; Stacher v. United States, 9 Cir. 1958, 258 F. 2d 112, 119-120, cert. den. 358 U.S. 907.

The judgment of the district court will be affirmed.

(Endorsed:) Opinion. Filed Sept. 22, 1959.

Paul P. O'Brien, Clerk.